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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/622,770 Confirmation No. : 4226  
First Named Inventor : Philip Lim-Kong WONG  
Filed : July 21, 2003  
TC/A.U. : 3766  
Examiner : F. Oropeza  
  
Docket No. : 029014.44732C1  
Customer No. : 23911  
  
Title : Wrist-Based Fitness Monitoring Devices

**RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT**

**Mail Stop AMENDMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Further to the Notice of Non-Compliant Amendment issued September 12, 2006, in connection with the above-referenced application, Applicants respectfully TRAVERSE the same on the following grounds.

The Response was deemed Non-Compliant for purportedly failing to contain a complete listing of claims.

On June 22, 2006, Applicants submitted a response to a Non-Final Office Action, which was issued by the Office in March 22, 2006. No claim amendments were made in that response, no new claims were presented, and no claim cancellations were indicated. Accordingly, a listing of claims was not required by 37 C.F.R. § 1.121, as is indicated by the official flyer issued by the Office on July 24, 2003, setting forth the Revised Amendment Practice, effective July 30, 2003 (copy attached).



Serial No. 10/622,770  
Response to Non-Compliant Amendment  
Attorney Docket No. 029014.44732C1

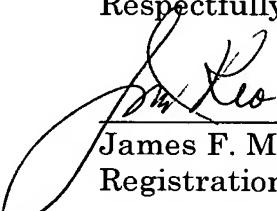
Applicants respectfully request rescission of the Notice of Non-Compliant Amendment, and further request consideration of the June 22, 2006, Response to Final Office Action.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #029014.44732C1).

Respectfully submitted,

September 26, 2006

  
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## **REVISED AMENDMENT PRACTICE: 37 CFR 1.121 CHANGED COMPLIANCE IS MANDATORY - Effective Date: July 30, 2003**

All amendments filed on or after the effective date noted above must comply with revised 37 CFR 1.121. See Final Rule: **Changes To Implement Electronic Maintenance of Official Patent Application Records** (68 Fed. Reg. 38611 (June 30, 2003), posted on the Office's website at: <http://www.uspto.gov/web/patents/ifw/> with related information. The amendment practice set forth in revised 37 CFR 1.121, and described below, replaces the voluntary revised amendment format available to applicants since February 2003. **NOTE: STRICT COMPLIANCE WITH THE REVISED 37 CFR 1.121 IS REQUIRED AS OF THE EFFECTIVE DATE (July 30, 2003).** The Office will notify applicants of amendments that are not accepted because they do not comply with revised 37 CFR 1.121 via a Notice of Non-Compliant Amendment. See MPEP 714.03 (Rev. 1, Feb. 2003). The non-compliant section(s) will have to be corrected and the entire corrected section(s) resubmitted within a set period.

**Bold underlined italic font has been used below to highlight the major differences between the revised 37 CFR 1.121 and the voluntary revised amendment format that applicants could use since February, 2003.**

Note: The amendment practice for reissues and reexamination proceedings, except for drawings, has not changed.

### **REVISED AMENDMENT PRACTICE**

#### **I. Begin each section of an amendment document on a separate sheet:**

Each section of an amendment document (e.g., Specification Amendments, Claim Amendments, Drawing Amendments, and Remarks) must begin on a separate sheet. Starting each separate section on a new page will facilitate the process of separately indexing and scanning each section of an amendment document for placement in an image file wrapper.

#### **II. Two versions of amended part(s) no longer required:**

37 CFR 1.121 has been revised to **no longer require** two versions (a clean version and a marked up version) of each replacement paragraph or section, or amended claim. Note, however, the requirements for a clean version and a marked up version for **substitute specifications** under 37 CFR 1.125 have been retained.

##### **A) Amendments to the claims:**

Each amendment document that includes a change to an existing claim, cancellation of a claim or submission of a new claim, **must include a complete listing** of all claims in the application. After each claim number in the listing, the status must be indicated in a parenthetical expression, and the **text of each pending claim** (with markings to show **current changes**) must be presented. The claims in the listing will replace all prior claims in the application.

- (1) The current status of all of the claims in the application, including any previously canceled, not entered or withdrawn claims, must be given in a parenthetical expression following the claim number using only one of the following seven status identifiers: (original), (currently amended), (canceled), (withdrawn), (new), (**previously presented**) and (**not entered**). The text of all pending claims, **including withdrawn claims**, must be submitted each time any claim is amended. Canceled **and not entered** claims must be indicated by only the claim number and status, without presenting the text of the claims.
- (2) The text of all claims **being currently amended** must be presented in the claim listing with markings to indicate the changes that have been made relative to the immediate prior version. The changes in any amended claim must be shown by underlining (for added matter) or strikethrough (for deleted matter) with 2 exceptions: (1) for **deletion of five characters or fewer, double brackets may be used (e.g., [[eroor]])**; and (2) if **strikethrough cannot be easily perceived (e.g., deletion of the number "4" or certain punctuation marks), double brackets must be used (e.g., [[4]])**. As an alternative to using double brackets, however, extra portions of text may be included before and after text being deleted, all in strikethrough, followed by **including and underlining the extra text with the desired change** (e.g., **number 4 as number 14 as**). An accompanying clean version is not required and should not be presented. Only claims of the status "currently amended," and "withdrawn" that are being amended, may include markings.
- (3) The text of pending claims **not being currently amended, including withdrawn claims**, must be presented in the claim listing in clean version, i.e., without any markings. Any claim text presented in clean version will constitute an assertion that it has not been changed relative to the immediate prior version except to omit markings that may have been present in the immediate prior version of the claims.

- (4) A claim being canceled must be listed in the claim listing with the status identifier “canceled”; the text of the claim must not be presented. Providing an instruction to cancel is optional.
- (5) Any claims added by amendment must be presented in the claim listing with the status identifier “(new)”; the text of the claim must not be underlined.
- (6) All of the claims in the claim listing must be presented in ascending numerical order. Consecutive canceled, or not entered, claims may be aggregated into one statement (e.g., Claims 1 – 5 (canceled)).

**Example of listing of claims (use of the word “claim” before the claim number is optional):**

Claims 1-5 (canceled)

Claim 6 (previously presented): A bucket with a handle.

Claim 7 (withdrawn): A handle comprising an elongated wire.

Claim 8 (withdrawn): The handle of claim 7 further comprising a plastic grip.

Claim 9 (currently amended): A bucket with a ~~green~~ blue handle.

Claim 10 (original): The bucket of claim 9 wherein the handle is made of wood.

Claim 11 (canceled)

Claim 12 (not entered)

Claim 13 (new): A bucket with plastic sides and bottom.

**B) Amendments to the specification:**

Amendments to the specification, including the abstract, must be made by presenting a replacement paragraph or section or abstract marked up to show changes made relative to the immediate prior version. An accompanying clean version is not required and should not be presented. Newly added paragraphs or sections, including a new abstract (instead of a replacement abstract), must not be underlined. A replacement or new abstract must be submitted on a separate sheet, 37 CFR 1.72. If a substitute specification is being submitted to incorporate extensive amendments, both a clean version (which will be entered) and a marked up version must be submitted as per 37 CFR 1.125.

The changes in any replacement paragraph or section, or substitute specification must be shown by underlining (for added matter) or strikethrough (for deleted matter) with 2 exceptions: (1) for deletion of five characters or fewer, double brackets may be used (e.g., [[error]]); and (2) if strikethrough cannot be easily perceived (e.g., deletion of the number “4” or certain punctuation marks), double brackets must be used (e.g., [[4]]). As an alternative to using double brackets, however, extra portions of text may be included before and after text being deleted, all in strikethrough, followed by including and underlining the extra text with the desired change (e.g., number 4 as number 14 as)

**C) Amendments to drawing figures:**

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment, and may be accompanied by a marked-up copy of one or more of the figures being amended, with annotations. Any replacement drawing sheet must be identified in the top margin as “Replacement Sheet” and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. Any marked-up (annotated) copy showing changes must be labeled “Annotated Marked-up Drawings” and accompany the replacement sheet in the amendment (e.g., as an appendix).

The figure or figure number of the amended drawing(s) must not be labeled as “amended.” If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Questions regarding the submission of amendments pursuant to the revised practice set forth in this flyer should be directed to: Elizabeth Dougherty or Gena Jones, Legal Advisors, or Joe Narcavage, Senior Special Projects Examiner, Office of Patent Legal Administration, by e-mail to [patentpractice@uspto.gov](mailto:patentpractice@uspto.gov) or by phone at (703) 305-1616.